8

PROMOTIONAL MARKETING

Background

The promotional marketing rules apply to consumer and trade promotions, incentive schemes and the promotional elements of sponsorships; they regulate the nature and administration of promotions.

Promoters should take legal advice before embarking on promotions with prizes, including competitions, prize draws, instant-win offers and premium promotions, to ensure that the mechanisms involved do not make them unlawful lotteries (see the Gambling Act 2005 for Great Britain and the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended) for Northern Ireland).

Promoters should comply with all other relevant legislation, including data protection legislation for which guidance is available from the Information Commissioner's Office.

The promotional marketing rules must be read in conjunction with all other parts of the Code, including the relevant rules in Section 5: Children and Section 18: Alcohol.

Definition

Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of promotional marketing techniques includes: "two for the price of one" offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws. The rules do not apply to routine, non-promotional, distribution of products or product extensions, for example one-off editorial supplements (in printed or electronic form) to newspapers or magazines.

Rules

8.1 Promoters are responsible for all aspects and all stages of their promotions.

8.2 Promoters must conduct their promotions equitably, promptly and efficiently and be seen to deal fairly and honourably with participants and potential participants. Promoters must avoid causing unnecessary disappointment.

Protection of consumers, safety and suitability

8.3 Promoters must do everything reasonable to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. Literature accompanying promotional items must give any necessary warnings and safety advice.

8.4 Alcoholic drinks must not feature in promotions directed at people under 18. Alcohol must not be available on promotion to anyone under 18.

8.5 Promotions must not be socially undesirable to the audience addressed by encouraging excessive consumption or irresponsible use.

8.6 Promoters must do everything reasonable to ensure that unsuitable or irresponsible material does not reach consumers or other recipients.

8.7 No promotion or promotional item should cause serious or widespread offence to consumers.

Children

8.8 Special care must be taken with promotions addressed to children or if products or items intended for adults might fall into the hands of children. (See Section 5: Children)

Availability

8.9 Phrases such as “subject to availability” do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.

8.10 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and either that they were capable of meeting that response or that consumers had sufficient information, presented clearly and in a timely fashion, to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

8.11 If promoters rely on being able to meet the estimated response but are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they must ensure relevant timely communication with applicants and consumers and, in cases of any likely detriment, offer a refund or a reasonable substitute product.

8.12 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited, unless the limitation is made sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.

8.13 If a prize promotion is widely advertised, the promoter must ensure the widespread availability of the requisite forms and any goods needed to establish proof of purchase.

Administration

8.14 Promoters must ensure that their promotions are conducted under proper supervision and make adequate resources available to administer them. Promoters, agencies and intermediaries should not give consumers justifiable grounds for complaint.

8.15 Promoters must allow adequate time for each phase of the promotion: notifying the trade; distributing the goods; issuing rules if relevant; collecting wrappers and the like and judging and announcing results.

8.15.1 Promoters must award the prizes as described in their marketing communications or reasonable equivalents, normally within 30 days.*

(This rule reflects a prohibited practice from Schedule 20 of the DMCCA. See note in Section 3 for more details).

8.16 [Rule deleted 30 April 2015].

Significant conditions for promotions

Background

Please see the Children section and the Prize Promotions sub-section.

8.17 All marketing communications or other material referring to promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead. Significant conditions or information may, depending on the circumstances, include:

8.17.1 **How to participate**
How to participate, including significant conditions and costs, and other major

factors reasonably likely to influence consumer's decision or understanding about the promotion

8.17.2 **Free-entry route explanation**
Any free-entry route should be explained clearly and prominently

8.17.3 **Start date**

The start date, if applicable

8.17.4 **Closing date**

8.17.4.a A prominent closing date, if applicable, for purchases and submissions of entries or claims. Closing dates are not always necessary, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer) if the offer is and is stated to be "subject to availability"; promotions limited only by the availability of promotional packs (gifts with a purchase, extra-volume packs and reduced-price packs) and loyalty schemes run on an open-ended basis

8.17.4.b Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and promotions addressed to or targeted at children are likely to need a closing date

8.17.4.c Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers

8.17.4.d Promoters must state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers, if the omission of that information is likely to mislead

8.17.4.e Closing dates must not be changed unless unavoidable circumstances beyond the control of the promoter make it necessary and either not to change the date would be unfair to those who sought to participate within the original terms, or those who sought to participate within the original terms will not be disadvantaged by the change.

8.17.5 **Proof of purchase**
Any proof of purchase requirements

8.17.6 **Prizes and gifts**
Promoters must specify the number and nature of prizes or gifts, if applicable. If the exact number cannot be predetermined, a reasonable estimate of the number and a statement of their nature must be made. Promoters must:

8.17.6.a distinguish those prizes that could be won, including estimated prize funds, from those prizes that will be won by someone by the end of the promotional period and

8.17.6.b state whether prizes are to be awarded in instalments or are to be shared among recipients

8.17.7 **Restrictions**
Geographical, personal or technological restrictions such as location, age or the need to access the Internet. Promoters must state any need to obtain permission to enter from an adult or employer

8.17.8 **Availability**
The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer. Any limitation on availability should be sufficiently clear for a consumer to assess whether participation is worthwhile.

8.17.9 **Promoter's name and address**
Unless it is obvious from the context or if entry into an advertised promotion is only through a dedicated website containing that information in an easily found format, the promoter's full name and correspondence address must be stated.

8.18 Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.

Prize promotions

8.19 Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts, or equivalent benefits, must always be clear. Ordinarily, consumers may expect an item offered to a significant proportion of participants to be described as a ‘gift’, while an item offered to a small minority may be more likely to be described as a ‘prize’. If a promotion offers a gift to a significant proportion and a prize to a minority, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.

8.20 Promoters must not exaggerate consumers' chances of winning prizes. They must not include a consumer who has been awarded a gift in a list of prize winners.

8.21 Promoters must not claim or imply that consumers are luckier than they are. They must not use terms such as "finalist" or "final stage" in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of a promotion if they have not.

8.21.1 Promoters must not falsely claim or imply that the consumer has already won, will win or will on doing a particular act win a prize (or other equivalent benefit) if the consumer must incur a cost to claim the prize (or other equivalent benefit) or if the prize (or other equivalent benefit) does not exist.*

(This rule reflects a prohibited practice from Schedule 20 of the DMCCA. See note in Section 3 for more details).

8.22 Promoters must not claim that consumers must respond by a specified date or within a specified time if they need not.

8.23 Promoters must avoid rules that are too complex to be understood and they must only exceptionally supplement or amend conditions of entry with extra rules. In such circumstances, promoters must tell participants how to obtain the supplemental or amended rules and they must contain nothing that could reasonably have influenced consumers against buying or participating.

8.24 Promoters of prize draws must ensure that prizes are awarded in accordance with the laws of chance and, unless winners are selected by a computer

process that produces verifiably random results, by an independent person, or under the supervision of an independent person.

8.25 Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.

8.26 In competitions, if the selection of a winning entry is open to subjective interpretation, an independent judge, or a panel that includes one independent member must be appointed. In either case, the judge or panel member must be demonstrably independent, especially from the competition's promoters and intermediaries and from the pool of entrants from which the eventual winner is picked. Those appointed to act as judges should be competent to judge the competition and their full names must be made available on request.

8.27 Withholding prizes (see rules 8.15.1 and 8.28.2) is justified only if participants have not met the qualifying criteria set out clearly in the rules of the promotion.

8.28 Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions must specify on all marketing communications or other material referring to them, the following information, clearly before or at the time of entry, where the omission of any of the specified items is likely to mislead.

8.28.1 any restriction on the number of entries

8.28.2 whether the promoter may substitute a cash alternative for any prize

8.28.3 if more than 30 days after the closing date, the date by which prizewinners will receive their prizes

8.28.4 how and when winners will be notified of results

8.28.5 Promoters must either publish or make available information that indicates that a valid award took place – ordinarily the surname and county of major prizewinners and, if applicable, their winning entries. At or before the time of entry, promoters must inform entrants of their intention to publish or make available the information and give them the opportunity to object to their information being published or made available, or to reduce the amount of

information published or made available. In such circumstances, the promoter must nevertheless still provide the information and winning entry to the ASA if challenged. The privacy of prizewinners must not be prejudiced by the publication of personal information and in limited circumstances (for example, in relation to National Savings) promoters may need to comply with a legal requirement not to publish such information.

8.28.6 in a competition, the criteria and mechanism for judging entries (for example, the most apt and original tiebreaker)

8.28.7 if relevant, who owns the copyright of the entries

8.28.8 if applicable, how the promoter will return entries

8.28.9 any intention to use winners in post-event publicity.

Front-page flashes

8.29 Publishers announcing reader promotions on the front page or cover must ensure that consumers know whether they are expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy must appear on the front page or cover.

Trade incentives

8.30 Incentive schemes must be designed and implemented to take account of the interests of everyone involved and must not compromise the obligation of employees to give honest advice to consumers.

8.31 If they intend to ask for help from, or offer incentives to, another company's employees, promoters must require those employees to obtain their employer's permission before participating. Promoters must observe any procedures established by companies for their employees, including any rules for participating in promotions.

8.32 Incentive schemes and relevant promotions must make clear if a tax liability might arise.

Charity-linked Promotions

8.33 Promotions run by third parties (for example commercial companies) claiming that participation will benefit a registered charity or cause must:

8.33.1 name each charity or cause that will benefit and be able to show the ASA or CAP the formal agreement with those benefiting from the promotion

8.33.2 if it is not a registered charity, define its nature and objectives

8.33.3 specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated (see rule 8.34)

8.33.4 state if the promoter has imposed a limit on its contributions

8.33.5 not impose a cut-off point for contributions by consumers if an amount is stated for each purchase. If a target total is stated, extra money collected should be given to the named charity or cause on the same basis as contributions below that level

8.33.6 be able to show that targets set are realistic

8.33.7 not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product

8.33.8 if asked, make available to consumers a current or final total of contributions made

8.33.9 not directly encourage children to buy, or exhort children to persuade an adult to buy for them, a product that promotes charitable purposes.

8.34 Where a promotion states or implies that part of the price paid for goods or services will be given to a charity or cause, state the actual amount or percentage of the price that will be paid to the charity or cause.

8.34.1 For any other promotion linked to a charity or where a third party states or implies that donations will be given to a charity or cause, the promotion must state the total (or a reasonable estimate) of the amount the charity or cause will receive.